

Chapter SEC 4

LICENSING OF BROKER-DEALERS AND AGENTS

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Note: Chapter SEC 4 as it existed on December 31, 1977 was repealed and a new chapter SEC 4 was created effective January 1, 1978.

SEC 4.01 Licensing procedure. (1) Applications for initial and renewal licenses of broker-dealers and agents shall be filed on forms prescribed by the commissioner and shall include all information required by such forms and any other information the commissioner may require.

(2) An "application" for purposes of section 551.32(1) (b), Wis. Stats., means all information required by the form prescribed under subsection (1) and any additional information required by the commissioner.

(3) Each applicant for an initial license as a broker-dealer or agent is required to pass a written examination prescribed by the commissioner, unless the requirement is waived under subsection (4). The examination shall relate to chapter 551, Wis. Stats., the rules of the commissioner thereunder, the applicable federal securities laws and the rules of the U.S. securities and exchange commission thereunder, general matters concerning the securities business, and such other matters as the commissioner may determine. The commissioner may prescribe different examinations for different classes of applicants.

(4) The commissioner may waive, in whole or in part, the examination requirement for:

(a) Any applicant insofar as the examination relates to general matters concerning the securities business, upon receipt of evidence of satisfactory completion of a comparable examination;

(b) Any applicant for license as an agent representing a licensed broker-dealer, provided that the agent will be adequately supervised, and the license is appropriately limited;

(c) Any applicant for license as an agent representing an issuer, provided the agent will be adequately supervised and the license is appropriately limited;

(d) Any applicant for license as an agent who, within 2 years prior to the date the application is filed, has been licensed under chapter 551, Wis. Stats., as an agent for a broker-dealer; or

(e) Any person by order of the commissioner under such conditions as the commissioner may prescribe.

(5) Prior to issuance of a license as a broker-dealer, a written examination shall be successfully completed by such supervisory personnel

representing the broker-dealer as the commissioner may require, and the commissioner may require that any such person be licensed as an agent for the broker-dealer.

(6) Any application for license which is not completed or withdrawn within 6 months from the date it is initially received may be deemed materially incomplete, and the commissioner may issue an order denying the license. For purposes of section 551.34 (1) (a), Wis. Stats., and this subsection, "application" means any request for a license.

(7) Every broker-dealer whose principal office is located in this state shall have at least one licensed person employed on a full-time basis at its principal office.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

SEC 4.02 Net capital requirements and aggregate indebtedness limitations. (1) Every broker-dealer shall maintain net capital in such minimum amounts as are prescribed for its activities under rule 15c3-1 of the securities exchange act of 1934, or in the amount of \$10,000, whichever is greater.

(2) The aggregate indebtedness of each broker-dealer to all other persons shall not exceed the levels prescribed under rule 15c3-1 of the securities exchange act of 1934.

(3) If a broker-dealer is an individual, such person shall segregate from personal capital an amount sufficient to satisfy the net capital requirement, and the amount so segregated shall be utilized solely for the business for which the broker-dealer is licensed.

(4) The commissioner may by order exempt any broker-dealer from the provisions of this rule, either unconditionally or upon specified conditions, if by reason of the broker-dealer's membership on a national securities exchange or the special nature of its business and its financial position, and the safeguards that have been established for the protection of customers' funds and securities, the provisions are not necessary in the public interest or for the protection of investors.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

SEC 4.03 Broker-dealers' records. (1) Every licensed broker-dealer shall prepare and keep current the following books and records relating to its business:

(a) Blotters (or other records of original entry) setting forth an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. The record shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

(b) Ledgers reflecting all assets and liabilities, income, and expense and capital accounts.

(c) Ledgers (or other records) itemizing separately as to each cash and margin account of every customer and of the broker-dealer and partners thereof, all purchases, sales, receipts and deliveries of securities

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and commodities for such account and all other debits and credits to such account.

(d) Ledgers (or other records) reflecting the following:

1. Securities in transfer;
2. Dividends and interest received;
3. Securities borrowed and securities loaned;
4. Moneys borrowed and moneys loaned (together with a record of the collateral therefor and any substitutions in such collateral); and
5. Securities failed to receive and failed to deliver.

(e) A securities record or ledger reflecting separately for each security as of the clearance dates, all "long" or "short" positions (including securities in safekeeping) carried by such broker-dealer for its account or for the account of its customers or partners, and showing the location of all securities long and the offsetting position to all securities short, and in all cases the name or designation of the account in which each position is carried.

(f) A memorandum of each order (order ticket), and of any other instruction given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instruction, any modification or cancellation thereof, the account for which entered, whether the transaction was unsolicited, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by the broker-dealer or any employee thereof, shall be so designated. The term "time of entry" shall mean the time when the broker-dealer transmits the order or instructions for execution, or, if it is not so transmitted, the time when it is received.

(g) A memorandum (order ticket) of each purchase and sale of securities for the account of the broker-dealer showing the price and, to the extent feasible, the time of execution.

(h) Copies of confirmations of all purchases and sales of securities, whether the confirmations are issued by the broker-dealer or the issuer of the security involved, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of the broker-dealer.

(i) Copies of all communications, correspondence and other records relating to securities transactions with customers.

(j) A separate file containing all written complaints made or submitted by customers to the broker-dealer or its agents relating to securities transactions.

(k) A customer information form (new account information worksheet) for each customer. If recommendations are to be made to the customer, the form shall include such information as is necessary to determine suitability in conformity with Wis. Adm. Code section SEC 4.06(1) (c).

(l) For each cash and margin account established and maintained with the broker-dealer, copies of all guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority in respect to the account, the name and address of the beneficial owner of each account and, in the case of a margin account, all margin and lending agreements, provided that in the case of a joint account or of an account of a corporation, the records are required only as to persons authorized to transact business for the account.

(m) A record of the proof of money balances of all ledger accounts in the form of trial balances.

(n) All partnership articles or, in the case of a corporation, all articles of incorporation, by-laws, minute books and stock certificate books of the broker-dealer.

(o) A separate file containing copies of all advertising, as defined in section 551.02 (1), Wis. Stats., published or circulated, as defined in Wis. Adm. Code sections SEC 1.02 (1) (a) and (b), by the broker-dealer in the conduct of its securities business.

(p) A monthly computation of its net capital and ratio of its aggregate indebtedness to its net capital.

(2) Every licensed broker-dealer shall preserve for a period of not less than 6 years, the first 2 years in an easily accessible place, all records required under subsection (1), except that records required under subsections (1) (k) and (l) shall be preserved by the broker-dealer for a period of not less than 6 years after the closing of the account; and records required under subsection (1) (n) shall be preserved by the broker-dealer for a period of not less than 6 years after withdrawal or expiration of its license in this state. After a record or other document has been preserved for 1 year as required above, a microfilm copy thereof may be substituted for the remainder of the required period. Compliance with the requirements of the U.S. securities and exchange commission concerning preservation of records is deemed compliance with this rule.

(3) Every branch office of a licensed broker-dealer as defined in Wis. Adm. Code section SEC 1.02 (7) shall prepare and keep current the following records for its customers serviced by such office:

(a) Copies of the records described in Wis. Adm. Code sections SEC 4.03 (1) (f), (h), (j), (k) and (o);

(b) Blotters (or other records of original entry) setting forth an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash. This requirement may be satisfied by maintaining a unit filing system wherein the order ticket information (described in Wis. Adm. Code section SEC 4.03 (1) (f)) required in subsection (3) (a) is accumulated and segregated on a daily basis;

(c) Copies of all communications, correspondence and other records relating to securities transactions with customers. Such other records include copies of customer monthly or other periodic statements that are issued by the broker-dealer, or are furnished to the broker-dealer by the issuer of a security purchased by a customer of the broker-dealer.

(4) The records required in subsection (3) shall be preserved by the office which prepared them for a period of not less than 3 years, the first 2 years in an easily accessible place, except that customer new account forms shall be preserved for a period of not less than 3 years after the closing of the account. After a record or document has been preserved for 1 year as required above, a microfilm copy thereof may be substituted for the remainder of the required period.

(5) No provision under Wis. Adm. Code section SEC 4.03 shall be deemed to require a member of a national securities exchange to make and keep such records of transactions cleared for such member by another member as are customarily made and kept by the clearing member.

(6) The commissioner may by order exempt any broker-dealer from all or part of the requirements of this rule, either unconditionally or upon specified conditions, if by reason of the special nature of its business, the requirements are not necessary in the public interest or for the protection of investors.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

SEC 4.04 Reporting requirements. (1) Each broker-dealer shall file annually with the commissioner, within 60 days after the end of its fiscal year, a copy of its annual financial statements, including supporting schedules, filed with the U.S. securities and exchange commission as required under rule 17a-5 under the securities exchange act of 1934.

(2) Each broker-dealer shall file with the commissioner a copy of any complaint related to its business, transactions or operations in this state, naming the broker-dealer or any of its partners, officers or agents as defendants in any civil or criminal proceeding, or in any administrative or disciplinary proceeding by any public or private regulatory agency, within 20 days of the date the complaint is served on the broker-dealer; a copy of any answer or reply thereto filed by the broker-dealer within 10 days of the date such is filed; and a copy of any decision, order or sanction made with respect to any such proceeding within 20 days of the date the decision, order or sanction is rendered.

(3) Each broker-dealer shall file with the commissioner within 30 days after the end of each month, a written report on a form prescribed by the commissioner, listing with respect to that month all securities transactions involving the broker-dealer relating to initial distributions, secondary distributions and private placements. No reports are required to be filed for months during which the broker-dealer did not engage in transactions subject to this requirement.

(4) Each broker-dealer shall file with the commissioner a notice of transfer of control or change of name not less than 30 days prior to the date on which the transfer of control or change of name is to become effective, or such shorter period as the commissioner may permit, and shall furnish any additional information relating thereto as the commissioner may require. A transfer of control of a broker-dealer shall constitute an application for withdrawal from the status of a licensed broker-dealer pursuant to section 551.34(6), Wis. Stats., unless the commissioner by order otherwise provides.

(5) Except as provided in Wis. Adm. Code sections SEC 4.04 (2), (4) and (9), all material changes in the information included in a broker-

dealer's most recent application for license shall be set forth in an amendment to form BD filed promptly with the commissioner.

(6) Every broker-dealer shall file with the commissioner the following reports concerning its net capital and aggregate indebtedness:

(a) Immediate telegraphic or written notice whenever the net capital of the broker-dealer is less than is required under Wis. Adm. Code section SEC 4.02(1), specifying the respective amounts of its net capital and aggregate indebtedness on the date of the notice;

(b) A copy of every report or notice required to be filed by the broker-dealer pursuant to rule 17a-11 under the securities exchange act of 1934, contemporaneous with the date of filing with the U.S. securities and exchange commission.

(7) Each broker-dealer shall give immediate telegraphic or written notice to the commissioner of the theft or mysterious disappearance of any significant amount of securities or funds from any office in this state, stating all material facts known to it concerning the theft or disappearance.

(8) Each broker-dealer shall file with the commissioner a copy of any subordination agreement relating to such broker-dealer, within 10 days after such agreement has been entered, unless prior thereto the broker-dealer has filed a copy of the agreement with a national securities exchange or association of which it is a member.

(9) Each broker-dealer shall notify the commissioner in writing prior to opening in this state any "branch office" as defined in Wis. Adm. Code section SEC 1.02(7). The notification shall include such information as the commissioner may request.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

SEC 4.05 Rules of conduct. (1) (a) Except as provided in paragraph (b), each broker-dealer shall give or send to the customer a written confirmation, promptly after execution of, and before completion of, each transaction. The confirmation shall set forth:

1. A description of the security purchased or sold, the date of the transaction, the price at which the security was purchased or sold and any commission charged;

2. Whether the broker-dealer was acting for its own account, as agent for the customer, as agent for some other person, or as agent for both the customer and some other person;

3. When the broker-dealer is acting as agent for the customer, either the name of the person from whom the security was purchased or to whom it was sold, or the fact that the information will be furnished upon the request of the customer, if the information is known to, or with reasonable diligence may be ascertained by, the broker-dealer; and

4. Whether the transaction was unsolicited.

(b) If applicable, compliance with rule 15c1-4(b) of the securities exchange act of 1934 shall be deemed compliance with this rule.

(2) Each broker-dealer shall establish and keep current a set of written supervisory procedures and a system for applying such procedures, which may be reasonably expected to prevent and detect any violations

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of chapter 551, Wis. Stats., and rules and orders thereunder. The procedures shall include the designation, by name or title, of a number of supervisory employees reasonable in relation to the number of its licensed agents, offices and transactions in this state. A complete set of the procedures and system for applying them shall be kept and maintained at every branch office.

(3) A broker-dealer shall not enter any contract with a customer if the contract contains any condition, stipulation or provision binding the customer to waive any rights under chapter 551, Wis. Stats., or any rule or order thereunder. Any such condition, stipulation or provision is void.

(4) No licensed agent or partner, officer or director of a licensed broker-dealer shall be an agent or a partner, officer or director of any other broker-dealer or shall be a qualified representative or partner, officer or director of an investment adviser unless such other broker-dealer or investment adviser is affiliated with the broker-dealer by reason of direct or indirect common control.

(5) The aggregate ownership by all partners, officers, directors or licensed agents of a licensed broker-dealer, or groups of which they are members, may not exceed 5% of the voting interest in any other broker-dealer or in any investment adviser, or in any entity controlling or under common control with the other broker-dealer or investment adviser, unless the other broker-dealer or investment adviser is affiliated with the broker-dealer by reason of direct or indirect common control, or unless permitted by order of the commissioner. This provision shall not prohibit any person from owning any equity security of a broker-dealer or investment adviser whose securities may be sold in transactions exempt from registration under section 551.23 (3), Wis. Stats.

(6) No broker-dealer shall permit or effect a withdrawal of any part of its net worth, including subordinated indebtedness, whether by redemption, retirement, repurchase, repayment or otherwise, that would cause its net capital or its aggregate indebtedness to violate Wis. Adm. Code sections SEC 4.02 (1) or (2), without prior written approval of the commissioner.

(7) Each broker-dealer shall provide each customer with a conformed copy of all contracts or agreements between the broker-dealer and such customer, and a copy of the customer information form prescribed under Wis. Adm. Code section SEC 4.03 (l) (k), not later than 15 days after the initial securities transaction effected in the customer's account.

(8) Every licensed broker-dealer shall require each of its licensed agents to have and keep current, and each agent shall have and keep current, the following records relating to customer securities transactions:

(a) A securities holding record for each customer including the customer's name, address, telephone number, age, occupation, investment objectives, and such other relevant information relating to such customer's financial situation and needs as is available to the agent, and a chronological listing of the names and amounts of all securities purchased or sold for the account of the customer, including the date of each transaction, and the unit purchase or sale price;

(b) A security cross-index record for each class of any issuer's securities in which a customer of such agent establishes a position, listing the

transaction date, the name of the customer, the number of shares or units of each such position, and the price per share or unit. With respect to a branch office, this requirement may be satisfied by maintaining on behalf of all securities agents effecting transactions from the branch office master security cross-index records including the required information.

(9) Every broker-dealer that effects transactions with or through a "financial institution or institutional investor" under Wis. Adm. Code section SEC 2.02(5) (c) shall maintain records confirming the facts required to be ascertained under that section.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

SEC 4.06 Prohibited business practices. (1) The following are deemed "dishonest or unethical business practices" or "taking unfair advantage of a customer" by a broker-dealer under section 551.34(1) (g), Wis. Stats., without limiting those terms to the practices specified herein:

(a) Causing any unreasonable delay in the delivery of securities purchased by any of its customers, or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

(b) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(c) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the broker-dealer;

(d) Executing a transaction on behalf of a customer without authority to do so;

(e) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(f) Extending, arranging for, or participating in arranging for credit to a customer in violation of the securities exchange act of 1934 or the regulations of the federal reserve board;

(g) Executing any transaction in a margin account without obtaining from its customer a written margin agreement prior to settlement date for the initial transaction in the account;

(h) Failing to segregate customers' free securities or securities in safe-keeping;

(i) Hypothecating a customer's securities without having a lien thereon unless written consent of the customer is first obtained, except as permitted by rules of the U.S. securities and exchange commission;

(j) Charging its customer an unreasonable commission or service charge in any transaction executed as agent for the customer;

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(k) Entering into a transaction for its own account with a customer with an unreasonable mark-up or mark-down;

(l) Entering into a transaction for its own account with a customer in which a commission is charged;

(m) Entering into a transaction with or for a customer at a price not reasonably related to the current market price;

(n) Executing orders for the purchase by a customer of securities not registered under sections 551.25 or 551.26, Wis. Stats., unless the securities are exempted under section 551.22, Wis. Stats., or the transaction is exempted under section 551.23, Wis. Stats.;

(o) Representing itself as a financial or investment planner, consultant, or adviser, when the representation does not fairly describe the nature of the services offered, the qualifications of the person offering the services, and the method of compensation for the services;

(p) Violating any rule of a national securities exchange or national securities association of which it is a member with respect to any customer, transaction or business in this state;

(q) Failing to furnish to a customer purchasing securities in an offering, not later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(r) Introducing customer transactions on a "fully disclosed" basis to another broker-dealer that is not licensed under chapter 551, Wis. Stats., unless the customer is a person described in section 551.23(8), Wis. Stats.;

(s) Recommending to a customer that the customer engage the services of an investment adviser that is not licensed under chapter 551, Wis. Stats., unless the customer is a person described in section 551.23(8), Wis. Stats.;

(t) Recommending to a customer that the customer engage the services of an investment adviser in connection with which the broker-dealer receives a fee or remuneration (other than directed business) from the investment adviser; and

(u) Changing a customer's mailing address on its books and records without authorization from the customer.

(2) The following are deemed "dishonest or unethical business practices" or "taking unfair advantage of a customer" by an agent under section 551.34(1) (g), Wis. Stats., without limiting those terms to the practices specified herein:

(a) Borrowing money or securities from a customer;

(b) Acting as a custodian for money, securities or an executed stock power of a customer;

(c) Effecting securities transactions with a customer not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are disclosed to, and authorized in writing by, the broker-dealer prior to execution of the transactions;

(d) Operating an account under a fictitious name, unless disclosed to the broker-dealer which the agent represents;

(e) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

(f) Dividing or otherwise splitting commissions, profits or other compensation receivable in connection with the purchase or sale of securities in this state with any person not also licensed as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control; and

(g) Engaging in any of the practices specified in subsections (1) (b), (c), (d), (e), (f), (g), (n), (o), (p), (q), (s), (t) or (u).

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

SEC 4.07 License period. (1) The license of any broker-dealer whose name commences with any of the letters A through D expires March 31 following the date of issuance of the license; the license of any broker-dealer whose name commences with any of the letters E through I expires June 30 following the date of issuance of the license; the license of any broker-dealer whose name commences with any of the letters J through O expires September 30 following the date of issuance of the license; and the license of any broker-dealer whose name commences with any of the letters P through Z expires December 31 following the date of issuance of the license. The license of an agent expires on the same day as that of the broker-dealer which the agent represents. The license of an agent representing an issuer expires on December 31 following the date of the issuance of the license, or upon the termination of the offering for which the agent was licensed, whichever first occurs. The commissioner may by order limit the period of, or specify an earlier expiration date for, any license.

(2) The license of an agent is not effective during any period (a) when the broker-dealer which the agent represents is not licensed, or (b) when the securities of the issuer which the agent represents are not subject to an effective order of registration or exemption, or upon termination of the offering.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

SEC 4.08 Withdrawal of licenses. (1) An application for withdrawal from the status of a licensed broker-dealer under section 551.34 (6), Wis. Stats., shall be filed by the licensee on a form prescribed by the commissioner, and shall include a report on the status of all customer accounts of the licensee in this state and any additional information the commissioner may require. If the licensee has any open customer accounts in this state, the settlement of those accounts is a condition of its withdrawal, and its withdrawal is not effective until permitted in writing by the commissioner.

(2) An application for withdrawal from the status of a licensed agent shall be filed by the broker-dealer or issuer which the agent represents within 10 days of the termination of the agent's employment on a form prescribed by the commissioner.

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SEC 4.09 Denial, suspension, revocation and censure. (1) Any order denying, suspending or revoking the license of a broker-dealer or censuring a licensee may include such other sanctions as the commissioner finds appropriate.

(2) The commissioner may revoke or suspend the license of an agent who is not a partner, officer or director of a broker-dealer, or may censure the licensee, for failure to supervise other licensed agents of the broker-dealer, if the agent was assigned supervisory duties by the broker-dealer, including established procedures and a system for applying them reasonably expected to prevent and detect any violations of statutes, rules and orders, and the agent failed reasonably to discharge those duties.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

SEC 4.10 Bank agency transactions. (1) A bank, savings institution or trust company not licensed as a broker-dealer may execute orders for the purchase or sale of securities as agent for the purchaser or seller thereof, in transactions not in violation of chapter 551, Wis. Stats., if the bank, savings institution or trust company:

(a) Has no direct interest in the sale or distribution of the securities purchased or sold, receives no commission, profit, or other compensation from any source other than the purchaser or seller, and delivers to the customer its own written confirmation of the order which clearly itemizes its commission, profit or other compensation; and

(b) In connection with purchases of securities from or through broker-dealers, discloses to the broker-dealer whether such purchase is for its own account, or for the account of a customer for whom it is acting as trustee, or for the account of a customer for whom it is acting as agent and whether such customer is a person specified under section 551.23 (8), Wis. Stats.

(2) The bank, savings institution, or trust company shall make, keep current and preserve for a period of not less than 3 years, adequate records of purchases and sales of securities by it as agent for its customers, including copies of its own confirmations delivered to its customers and copies of confirmations received from broker-dealers in connection with such transactions and records confirming any customer is a person specified under section 551.23 (8), Wis. Stats.

(3) Nothing in this rule shall prevent a bank, savings institution or trust company from acting as depository, custodian, exchange agent, escrow agent, transfer agent, registrar, agent administering dividend reinvestment plans or in any similar capacity in the ordinary course of business.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.